IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	Dave MCDYSAN *et al.*	Confirmation No.:	7587
Application No.:	09/723,480	Examiner:	Bates, Kevin T
Filed:	November 28, 2000	Group Art Unit:	2456
Attorney Docket No.:	RIC00044		

For: MESSAGE, CONTROL AND REPORTING INTERFACE FOR A DISTRIBUTED NETWORK ACCESS SYSTEM

Commissioner for Patents
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed January 20, 2011.

I. STATUS OF THE CLAIMS

Claims 1-43 are pending in this appeal. Claims 3, 9, 13, 15, 16, 18, 19, and 22-39 are original claims while claims 1, 2, 4-8, 10-12, 14, 17, 20, 21, and 40-43 were previously presented. No claim is allowed. This appeal is therefore taken from the final rejection of claims 1-43 on October 22, 2010.

II. GROUNDS OF REJECTION TO BE REVIEWED

Claims 1-4, 7-9, 12, 13, 17, 20-24, 27, 28, 31, 32, 36, 39, and 40 were rejected for obviousness under 35 U.S.C §103(a) based on *Albert et al.* (US 6,606,316) in view of *Gai* (US 6,167,445).

Claims 5 and 25 were rejected for obviousness under 35 U.S.C. §103(a) based on *Albert et al.* (US 6,606,316) and *Gai* (US 6,167,445) in view of *Haas* (US 5,115,432).

Claims 16, 18, 35, and 37 were rejected for obviousness under 35 U.S.C. §103(a) based on *Albert et al.* (US 6,606,316) and *Gai* (US 6,167,445) in view of *Feldman et al.* (US 6,055,561).

Claims 19 and 38 were rejected for obviousness under 35 U.S.C. §103(a) based on *Albert et al.* (US 6,606,316) and *Gai* (US 6,167,445) in view of *Grant et al.* (US 5,027,269).

Claims 10, 11, 29, and 30 were rejected for obviousness under 35 U.S.C. §103(a) based on *Albert et al.* (US 6,606,316) and *Gai* (US 6,167,445) in view of *Gai et al.* (US 6,651,096).

Claims 6, 14, 15, 26, 33, 34, 42, and 43[1] were rejected for obviousness under 35 U.S.C. §103(a) based on *Albert et al.* (US 6,606,316) and *Gai* (US 6,167,445) in view of *Gibson et al.* (US 6,680,943).

Claim 41 was rejected for obviousness under 35 U.S.C. §103(a) based on *Albert et al.* (US 6,606,316) and *Gai* (US 6,167,445) in view of *Mo et al.* (US 7,133,403).

[1] While claims 42 and 43 were not included in the statement of rejection in the Final Office Action of October 22, 2010, it is apparent from their inclusion in the explanation of the rejection, at pages 12-13 of the Final Office Action, that their omission by the Examiner was unintentional.

III. ARGUMENT

Initially, Appellants maintain and incorporate herein the arguments advanced in the Appeal Brief filed December 16, 2010. The arguments presented *infra* address certain new assertions presented by the Examiner in the Answer.

At pages 15-17 of the Answer, responsive to Appellants' argument that the combination of *Albert et al.* and *Gai* does not teach or suggest routing the second subset of the received messages not communicated to the external processor, via the access router, to the network access system, the Examiner asserted that the only claim element not disclosed by *Albert et al.* is that the second subset of messages is transferred to the external network via the access router, and that *Gai* provides for this deficiency with a network that configured policy controls to forwarding devices in the network. The Examiner determined that a person of ordinary skill in the art "could use Gai's teaching that messages that can have messages applied policies to them at a first forwarding device and can be sent onto a second network via an intermediate hop and apply that teaching to improve the Albert system of Fig 2A" (sic, Answer-pages 16-17). Further, the Examiner asserted that, based on *Gai*, the person of ordinary skill in the art would "include an intermediate device between the forwarding agent 231 and the server system 220," resulting in "a system where the second subset of messages in Albert would be transferred to the external network of 220, via an access router…"; the motivation being "to allow Albert's system to become more complex and have additional destinations attached to intermediate device and not have the forwarding agent be required to be connected to all server destinations directly" (sic, Answer-page 17). The Examiner further asserted that the Board, in its previous decision of September 21, 2009, "determined that Albert anticipates the servers are on a second network

external to the first network and that the second subset of packets are routed via a second network interface," referring to pages 9-11 of that decision. Appellants respectfully disagree.

Initially, the Examiner is clearly wrong in asserting that the Board determined "that the second subset of packets are routed via a second network interface" because the Board failed to address the "second subset" feature at all.

In any event, independent claim 1 recites, *inter alia*, "**routing the second subset of the received messages not communicated to the external processor, via the access router**, from the network access system via a second network interface." Independent claims 21 and 40 recite similar features. Since *Albert et al.* discloses no access router at all, it cannot route a second subset of received messages "via the access router." Moreover, the Examiner has identified the service manager of *Albert et al.* as corresponding to the claimed "external processor," but the service manager is not receiving messages that have been divided into two subsets. Rather, the traffic bound for the group of servers 220 is divided into two groups, one group passing through forwarding agent 231 and the other group passing through forwarding agent 232 (col. 6, lines 24-27). The traffic originating from network 210 is divided between the two forwarding agents, rather than being sent to the service manager (external processor). Accordingly, *Albert et al.* does not teach or suggest "routing the second subset of the received messages **not communicated to the external processor**..." because this claim feature implies that at least some messages are communicated to the external processor (with the messages that are not so communicated being routed to the second network interface from the network access system via the access router), and, in *Albert et al.*, no messages are communicated to the service manager. Rather, the messages are communicated to the forwarding agents and the service managers communicate with the forwarding agents, providing the decisions that enable load balancing in the network.

Therefore, it is clear that *Albert et al.* fails to teach or suggest the claim feature "**routing the second subset of the received messages not communicated to the external processor, via the access router**, from the network access system via a second network interface."

The Examiner relied on *Gai et al.* for a teaching of configuring policy controls to forwarding devices in a network, relying on col. 9, lines 55-58; messages forwarded by a router, relying on col. 11, lines 1-10, and additional intermediate routing devices which route packets policed onto their destinations, relying on col. 7, line 60-65, and col. 11, lines 1-10). Thus, the Examiner determined that *Gai et al.* taught a forwarding device for receiving messages, apply rules to those messages, and forward the messages onto an external network via an intermediate router device.

In *Gai et al.*, traffic that belongs to a specific group is accepted and any "traffic that does not belong to the group **should be dropped**" (col. 12, lines 30-31, emphasis added). Thus, in *Gai et al.*, either packets are accepted for forwarding or they are dropped. Messages are not divided into two subsets, with one subset forwarded one way and the other subset forwarded another way. The claimed invention does not drop any messages, and there would have been no suggestion from dropping packets that do not belong to a certain group, as in *Gai et al.*, to, instead, forward messages in two different ways depending on the subset. Thus, to whatever extent *Gai et al.* may be considered to teach a router, or an access router, it does not provide any teaching or any rationale that would have led the person of ordinary skill in the art to adapt such an access router to *Albert et al.* in order to **route "the second subset** of the received messages **not communicated to the external processor**, **via the access router**, from the network access system via a second network interface different from the first network interface to a second network external to the network access system."

The Examiner asserted that the person of ordinary skill in the art would have been led from the teaching of *Gai et al.* "to improve the Albert system of Fig 2A." Appellants respectfully disagree. *Albert et al.* already forwards messages via forwarding agents. Other than a reconstruction of Appellants' claimed invention, the person of ordinary skill in the art would recognize no benefit in attempting to insert an access router somewhere in the *Albert et al.* system -- ostensibly such insertion would be performed in a branch between one forwarding agent and the group of servers. Moreover, even if one were led to so modify *Albert et al.*, and Appellants assert that there would have been no motivation to modify, it is not understood why the *Albert et al.* system should be modified to place an access router in line with only one forwarding agent (which would need to be done if only one subset of messages is to be communicated via the access router). If the proposed modification were made, and, again, it would not, then access routers would be employed in conjunction with both forwarding agents in *Albert et al.*, not just one. Accordingly, the claimed invention would not result because there would be no routing of a "**second subset** of the received messages **not communicated to the external processor**, **via the access router**, from the network access system via a second network interface different from the first network interface to a second network external to the network access system."

Accordingly, there would have been no reason to modify *Albert et al.*, especially in view of anything taught by *Gai et al.,* to include an access router, such that there is a routing of a "**second subset** of the received messages **not communicated to the external processor**, **via the access router**, from the network access system via a second network interface different from the first network interface to a second network external to the network access system."

At pages 17-18 of the Answer, responsive to Appellants' argument that the applied references are too different to be properly combinable, the Examiner asserted that *Gai et al.*

teaches a system for implementing global traffic policies on diverse intermediate devices and *Albert et al.* is concerned with separately programming forwarding devices for the purpose of classifying packets and tailoring data flows. Therefore, the Examiner concluded that the references are analogous due to the ability to program rules into intermediate devices to allow implementation of various traffic controls. Appellants respectfully disagree.

The references are not analogous as *Gai et al.* is concerned with defining and implementing QoS policies, while *Albert et al.* is concerned with gathering network statistics in a distributed network service environment and forwarding packets of information according to load balance considerations. Moreover, treatment of data packet flows is much different.

In *Gai et al.,* any "traffic that does not belong to a group **should be dropped**" (col. 12, lines 30-31, emphasis added). Thus, either packets are accepted for forwarding or they are dropped, which is a completely different approach from that of *Albert et al.*, whereby packets or messages are divided, with some messages forwarded one way and other messages forwarded another way. The claimed invention does not drop any messages, and there would have been no suggestion from dropping packets that do not belong to a certain group to, instead, forward messages in two different ways depending on the subset. As previously argued in the principal Appeal Brief, there would have been no reason for the person of ordinary skill in the art to take the router 318 of *Gai et al.* and force-fit it into the system of *Albert et al.*, which already discloses a way to forward messages without the use of an access router, as claimed.

Accordingly, the combination of *Albert et al.* and *Gai et al.* is improper and, even if made, the claimed invention would not result.

IV. CONCLUSION AND PRAYER FOR RELIEF

Appellants, therefore, request the Honorable Board to reverse each of the Examiner's rejections.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

February 9, 2011
Date

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